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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1432

STAUGHTON LYND, ET AL.,
Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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QUESTIONS PRESENTED.

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1. Whether the decision to close the street adjacent to the convention site for purposes of security and traffic was in consideration of a substantial governmental interest; whether the first amendment justified petitioners' refusal to follow the order enforcing that decision.
2. Whether non-violent refusal to leave the street constituted interference with police duty to close the street.

REASONS FOR DENYING THE WRIT.

I.

A SUBSTANTIAL GOVERNMENTAL INTEREST COMPELLED THE CLOSING OF THE STREET; THE CLOSING WAS NOT INTENDED TO LIMIT FREEDOM OF EXPRESSION.

The police order closing the street two hours before each session of the national convention was a valid one. Its narrow compass was in accord with the limits expressed in *United States* v. *O'Brien*, 391 U. S. 367, 377 (1968): Where first amendment rights are involved, governmental regulation is permitted only if it (A) furthers an important or substantial governmental interest, (B) is unrelated to the suppression of freedom of expression, and (C) is no greater than is essential to the furtherance of that interest.

A. The substantial governmental interest in securing the area adjacent to the site of the convention was recognized in the opi on of the Illinois Supreme Court. The regulation closing Halsted Street, the street adjacent to the Amphitheatre, was intended to provide safety for the delegates who had gathered to select the presidential candidate and for the spectators and press who had come to observe the proceedings. Closing the street was also intended to maintain the free flow of traffic to and from the sessions at the Amphitheatre with the least possible disruption to the neighborhood (R. 95, 318-25).

B. The order was unrelated to the suppression of free expression. The Deputy Chief of Police who was in charge of convention security testified that the decision was not an *ad hoc* one. It was not formulated in response to

petitioners' march. Preparations for handling the convention were promulgated in meetings beginnning more than a month before the opening of the convention (R. 86-90). He testified that his main concern, and that of the other security officers participating in the planning, was for the safety of the convention; limitation of expression did not enter their discussion and it was not the purpose of the order closing the street. Moreover, the decision was reached before the police had any knowledge of the march, and, in fact, before the marchers, themselves, had planned such a march (R. 97-106). (The final decisions regarding convention security were reached Friday, August 23. It was not until the following Sunday or Monday (R. 434-5, 494-99), however, that the group decided to march. Meanwhile, the two-hour closing had been observed from the time of the beginning of the convention.) That the closing was not aimed at the marchers is also indicated by the fact that it had put into effect regardless of whether marchers were present. Thus, Tuesday, the evening before the arrests, the marchers arrived at the vicinity of the Amphitheatre and found Halsted Street closed because the evening session of the convention was about to begin. At that time they were informed of the two-hour closing plan and marched to an area a short distance away to await the reopening of the street following the session (R. 455, 469-70, 514, 525). The regulation was, then, uniformly applied, and not for the purpose of limiting expression.

C. The regulation was no greater than was essential for the furtherance of the governmental interest. The street closing was limited to a single street, the one adjacent to the Amphitheatre. It was in effect only during the time of convention sessions and two hours beforehand (in order to allow re-routing of traffic (R. 330-31)). At

all other times, the street was open for picketing. In fact, the record shows that the marchers did indeed picket on Halsted for a period of six hours prior to the time the street was closed at 10:00 a.m. in preparation for the noon session of the convention. In addition, picketing was permitted at other nearby places (R. 437). Indeed, the petitioners marched, protected and guided by police, from downtown unhindered all the way to the Amphitheatre (R. 453-54). Thus, except for a short length of Halsted Street during certain hours of the day, petitioners' freedom of expression was unlimited.

Petitioners' theory of the case is that because their picketing was in furtherance of expressing an idea, they were not required to heed the police order closing the street. Their theory is similar to one rejected by this Court in *Adderley* v. *Florida,* 385 U. S. 39 (1966). This Court rejected that theory, noting that it had "as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please" 385 U. S. at 47-48.

The street closing was valid; that the marchers were expressing their opinions did not exempt them from observing it.

II.

PETITIONERS' NON-VIOLENT REFUSAL TO OBEY THE VALID POLICE ORDER CONSTITUTED INTERFERENCE WITH THE DUTY OF THE POLICE.

The thrust of petitioners' second argument is that their refusal to leave when the street was closed did not constitute a "physical act or exertion." However, just because petitioners were not violent does not mean their conduct was not illegal. The fact that they were not dis-

orderly is not a defense where their demeanor is not an element of the offense. In the context of the offense with which they are charged, petitioners are mistaken in urging that in order to be convicted, their "physical" act must be a "disorderly" act.

Although respondent agrees that petitioners' continuing to march was not disorderly, petitioners were not charged with being disorderly. Their *refusal to leave* was a "physical act" sufficient to sustain their conviction. It was petitioners' physical presence that interfered with the police duty to close Halsted Street in preparation for the convention.

Such a conviction for non-violent interference with police duty is in accord with a case recently refused review in this Court, *People* v. *Meyer*, 44 Ill. 2d 1 (1969), *cert. den.* 397 U. S. 1024, *reh. den.* 398 U. S. 915. Meyer was charged, as were petitioners, with violating Section 11-33 of the Municipal Code, interfering with police. Meyer was delivering a street-corner speech to a crowd of 100 to 200 persons who became very agitated. His leaflets were burned, a sign was torn down, and a fight was about to ensue when police dispersed the crowd and ordered Meyer to move on. He refused and was convicted. His inert refusal to obey was a sufficient "physical act or exertion" to constitute interference with policy duty. He merely stood his ground in defiance of a valid order; in the present case, petitioners continued their marching in defiance of a valid order, interfering with the duty of the police to close the street.

The instant decision of the Illinois Supreme Court is not in conflict with such cases as *Cox* v. *Louisiana*, 379 U. S. 536, 559 (1965), *Edwards* v. *South Carolina*, 372 U. S. 229 (1963) or *Gregory* v. *Chicago*, 394 U. S. 111 (1969). The defendants in those cases were convicted of breaching

the peace or being disorderly, when in fact they were not. Petitioners here were not so charged. Although their interference was not accomplished in a violent manner, their refusal to heed the street closing was interference nonetheless.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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